S.B. CIVIL WRIT PETITION NO.5215/2004

M/s. Vijay Singh Prathviraj & Ors. vs. Vinod Kumar & anr.

Date : 9.12.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.K. Thanvi, for the petitioners.

Mr. C.S.Kotwani, caveator, for respondent no.1

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 28.8.2004 by which the trial court allowed the application of the plaintiff/respondent filed under Section 65 of the Indian Evidence Act and permitted the plaintiff to produce secondary evidence.

According to learned counsel for the petitioners, the respondent/plaintiff did not serve the notice as required under Section 66 of the Evidence Act calling upon the other party to produce the other documents and, therefore, the trial court should not have allowed the production of secondary evidence. Learned counsel for the petitioner submits that the balance-sheet which is sought to be produced is not referred in the pleadings.

I have considered the submissions of learned counsel for the petitioners and perused the reasons given in the impugned order.

The trial court passed the order after considering the facts of the case and even if there is any error of law, this Court is not inclined, looking to the nature of order passed by the trial court in the facts of the case, to invoke writ jurisdiction.

The better course would be to challenge the order, in case any occasion arises, in appeal.

In view of the above, this writ petition having no force is hereby dismissed with a liberty to the petitioner to challenge the impugned order at appropriate stage before the appropriate forum, if any occasion arises to do so.

(PRAKASH TATIA), J.

S.Phophaliya